IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 904/2002

NAND KISHORE Vs. STATE OF RAJASTHAN & ORS.

DATE: 02.04.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Hari Barath for the petitioner.
Mr. B.S. Chhaba, Public Prosecutor for the State.

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The present criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the petitioner against the judgment dated 08.08.2002 passed by the Additional Sessions Judge No.2, Sikar, Camp Srimadhopur in Criminal Appeal No. 36/2001, by which the Appellate Court has allowed the criminal appeal filed by the accused-respondents and granted them the benefit of probation under the provisions of Probation Of Offenders Act, whereas they were convicted vide order dated 27.05.98 passed by the Judicial Magistrate, Ringus in Criminal Case No. 298/94.

I have heard rival submissions of the respective parties and have also gone through the judgments passed by the trial Court and the Appellate Court.

Vide judgment dated 27.05.98 the trial Court has convicted the accused-respondents for the offence

under Sections 148, 323/149 and 325/149 IPC and sentenced each of them to undergo RI for one year and a fine of Rs. 100/- under Section 148 IPC, RI for six months and a fine of Rs. 100/- under Section 323/149 IPC and RI for two years and a fine of Rs. 200/- under Section 325/149 IPC.

Against the said judgment dated 27.05.98, the accused-respondents have preferred an appeal and the Appellate Court vide its judgment dated 08.08.2002, while confirming the conviction of the accused-respondents under Sections 148, 323/149 and 325/149 IPC, granted them the benefit of probation under the provisions of the Probation of Offenders Act.

Having gone through the record of the case as well as the impugned judgment of the Appellate Court dated 08.08.2002 and the judgment of the trial Court dated 27.05.98, I find illegality and error apparent on the face of the record and the impugned judgment of the Appellate Court dated 08.08.2002 deserves to quashed and set-aside.

Hence, the impugned judgment dated 08.08.2002 passed by the Additional Sessions Judge No.2, Sikar is hereby quashed and set-aside and the matter is remanded back to the Appellate court for fresh adjudication after giving opportunity of being heard to the parties and after considering the aspect whether in view of the

observations made by the trial Court vide its judgment dated 27.05.98 that the accused-respondents are previously convicted also, they are entitled to get the benefit of probation under Section 4 of the Probation of Offenders Act or not, and shall pass fresh order in accordance with the provisions of law.

With these observations, the revision petition stands disposed of.

Record be sent back forthwith.

(K.S. RATHORE),J.

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